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No. 86-880

In the Supreme Court of the United States

OCTOBER TERM, 1986

JOHN C. HUMPHREY, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Coast Guard properly conducted a suspicionless boarding of petitioners' sailboat on the high seas to conduct a documentation and safety inspection.

2. Whether, in the circumstances of this case, a warrantless inspection of the sailboat's below-deck area was proper.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 3-32) is reported at 759 F.2d 743.

JURISDICTION

The judgment of the court of appeals was entered on May 2, 1985, and a petition for rehearing was denied on September 26, 1986 (Pet. App. 1-2). The petition for a writ of certiorari was filed on November 24, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

After a bench trial in the United States District Court for the District of Alaska, petitioners were convicted of possessing marijuana on a vessel of American registry with intent to distribute it, in violation of 21 U.S.C. 955a(a), and of conspiring to commit that offense, in violation of 21 U.S.C. 955c. Petitioner Humphrey was sentenced to four years' imprisonment, petitioner Garbez to

two years' imprisonment, and petitioner Smith to 30 months' imprisonment. The court of appeals affirmed (Pet. App. 3-32).

1. On June 20, 1982, petitioners were sailing in the North Pacific Ocean on the ORCA, a 39-foot sailboat. The boat was some 2,000 miles from the coast of the continental United States, and more than 700 miles from the nearest landfall in the Aleutian Islands. Pet. App. 4 & n.1. On that date, the ORCA was spotted by a Coast Guard cutter. After an exchange of radio messages initiated by petitioners, the commander of the cutter decided to board the ORCA for a routine safety and document inspection; as a magistrate later found, the commander boarded the ORCA "to determine whether she was capable of making the journey home." *Id.* at 11.

Upon boarding the ORCA, Coast Guard Lieutenant Rutz asked whether any weapons were on the vessel. When petitioner Humphrey responded affirmatively, Rutz asked whether he could see the weapons. Humphrey then led Rutz below deck, where the officer took possession of and unloaded the vessel's firearms. After inspecting the ORCA's below-deck fire extinguishers at Humphrey's invitation, Rutz asked whether he could examine the bathroom facilities, or marine sanitation device. Humphrey responded that Rutz would have to move some loose sails to reach the device. When Rutz did so, he discovered approximately 50 foil packages with seeds and green vegetable matter adhering to the sides. A test proved the contents of the packages to be marijuana. A subsequent search of the ORCA led to the discovery of some 3,100 pounds of marijuana worth more than $3 million. Pet. App. 5-6.

2. The district court denied petitioners' motion to suppress the marijuana (see Pet. App. 33). The court of appeals affirmed, rejecting petitioners' argument that both

the original boarding and the subsequent entry below-deck by Coast Guard officers violated the Fourth Amendment (*id.* at 3-32).

In rejecting the first of these contentions, the court of appeals relied principally on *United States* v. *Villamonte-Marquez*, 462 U.S. 579 (1983), which upheld a suspicionless and warrantless boarding of a vessel in a ship channel that connected a designated customs port of entry with the open sea. The court of appeals noted that "the privacy interest invaded by the boarding of the ORCA is not materially different from the privacy interest evaluated in *Villamonte-Marquez*" (Pet. App. 10). And the court explained that, while "[t]he governmental interests in the two cases are factually distinguishable, * * * in both cases the governmental interest is sufficiently substantial to outweigh the minimal intrusion on protected privacy" (*id.* at 10-11). Here, the court noted, there were two governmental interests at work: the "substantial governmental interest in enforcing documentation laws on the high seas," and the "governmental interest in safety," which "was particularly strong in this case because of the course and location of the ORCA in the North Pacific" (*id.* at 11).[1]

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[1] The court cited with approval the magistrate's finding that the Coast Guard commander had boarded the ORCA to determine whether she was capable of making port, noting the commander's testimony "that he would have been remiss in his duty to insure the safety of the United States citizens at sea if he had not made a safety inspection of the ORCA under the circumstances" (Pet. App. 11-12). The court also noted the magistrate's finding that "the safety hazard presented by the location and course of the ORCA constituted 'cause' for the boarding" by "providing reason to believe a violation of safety or document regulations existed"; the court of appeals found it unnecessary to review that finding "because of our conclusion that the balance of interests reconciled the boarding with the Fourth Amendment, even in the absence of probable cause" (*id.* at 12 n.4).

The court noted that its decision to uphold the boarding was "highly fact specific" and did "not establish a general rule that approves all warrantless, suspicionless, and discretionary boardings of noncommercial vessels on the high seas" (Pet. App. 13). Rather, the court held that a "daytime boarding for the purpose of conducting a safety inspection that is conducted in a minimally intrusive manner, when the vessel is in a location that poses a substantial risk to its occupants, is reasonable under the Fourth Amendment balancing test" (*ibid.*).

The court proceeded to hold that Rutz's entry into the ORCA's below-deck cabin was lawful: "Once Humphrey voluntarily told Lt. Rutz that there were firearms below deck, securing those weapons to insure the safety of the boarding party provided a legitimate reason to go below deck" (Pet. App. 18-19). And the court concluded that Rutz's attempt to continue the safety and documentation inspection by examining the marine sanitation device, "after he had legitimately gained access to the cabin, did not violate the Fourth Amendment" (*id.* at 19 (footnote omitted)). The court explained that "[o]nce Lt. Rutz was legitimately below deck, the defendants' remaining expectation of privacy in the small cabin area was minimal. The additional intrusion upon protected privacy interests generated by an inspection of the marine sanitation device was almost nil" (*id.* at 19-20 (footnotes omitted)). Again, the court emphasized "the narrow basis of [its] holding." Because Rutz had independent cause to go below deck in order to secure the weapons and ensure the safety of the boarding party, the court did "not decide[] whether a routine safety and document inspection may intrude into the privacy of below-deck living quarters absent such cause" (*id.* at 21). The court therefore expressly declined to decide whether a warrant would be necessary for a search of a vessel's living quarters when an entry into the area was

not necessary to ensure the safety of the boarding party (*id.* at 22).[2]

ARGUMENT

Before this Court, petitioners again challenge both the Coast Guard's initial warrantless and suspicionless boarding of the ORCA to conduct a document and safety inspection, and the boarding party's subsquent below-deck activities. These challenges are without merit. In upholding the propriety of the initial boarding, the court of appeals simply applied the principles set out in *Villamonte-Marquez*; in declining to find a Fourth Amendment violation in Rutz's continuation of the inspection below-deck, the court tied its ruling directly to the record here. Neither of these holdings conflicts with the decision of any other court of appeals, and neither warrants further consideration.

1. In *Villamonte-Marquez*, the Court upheld a warrantless and suspicionless document inspection of a vessel in a channel connecting a designated customs port of entry with the open sea. See 462 U.S. at 581-583. The Court explained that its "focus in this area of Fourth Amendment law has been on the question of the 'reasonableness' of the type of governmental intrusion involved," so that " 'the permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests.' " *Id.* at 588 (quoting *Delaware* v. *Prouse*, 440 U.S. 648, 654 (1979)). Applying this test, the Court found that the "intrusion on Fourth Amendment interests" that follows from a document inspection is "quite limited," since "it involves only a brief

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[2] The court then held that the marijuana came into plain view as Rutz attempted to inspect the marine sanitation device (Pet. App. 23-27). Petitioners have not challenged that determination.

detention where officials come on board, visit public areas of the vessel, and inspect documents." 462 U.S. at 592. Conversely, the Court determined that "[t]he nature of the governmental interest in assuring compliance with documentation requirements" (*id.* at 593)—to prevent smuggling and to "ensur[e] safety on American waterways" (*id.* at 591)—is substantial. The Court therefore held that the document inspection was "reasonable" within the meaning of the Fourth Amendment.

As the court of appeals explained, the *Villamonte-Marquez* holding is largely dispositive of petitioners' challenge to the initial boarding of the ORCA. The degree of intrusion on privacy interests is the same in both cases; a document inspection has an equally limited scope whether it occurs on the high seas or in a ship channel. And while, as the court of appeals noted, the governmental interests here are factually distinguishable from the ones at issue in *Villamonte-Marquez*, the interests in the two cases are equally weighty. Because the United States is obligated by treaty to enforce documentation requirements for American vessels in international waters, the government has good reason to check the documents of vessels travelling on the high seas. See Pet. App. 11; compare *Villamonte-Marquez*, 462 U.S. at 590-591.[3] Moreover, there plainly is a legitimate government interest in assuring the safety of American vessels on the high seas—an interest that was especially noteworthy here, because the course and location of the ORCA gave Coast Guard officers "particularly strong" reasons to question

[3] Moreover, the inspection here, like the one in *Villamonte-Marquez*, was specifically authorized by statute. Under 14 U.S.C. 89(a), Coast Guard officers "may at any time go on board of any vessel subject to the jurisdiction, or to the operation of any law, of the United States, address inquiries to those on board, examine the ship's documents and papers, and examine, inspect, and search the vessel and use all necessary force to compel compliance."

the ability of the vessel to make port (Pet. App. 11-12). In these circumstances, the court of appeals was correct in finding that "the boarding itself was 'reasonable' " (*id.* at 13).[4]

Petitioners' related contention that the circuits are in conflict on this point (Pet. 9-14) is without merit. As petitioners recognize (*id.* at 10-11), the First, Fifth, and Eleventh Circuits consistently have held that the Coast Guard may make suspicionless boardings of American vessels on the high seas to conduct documentation and safety checks. See, *e.g.*, *United States* v. *Elkins*, 774 F.2d 530, 533-534 (1st Cir. 1985); *United States* v. *Hilton*, 619 F.2d 127, 131 (1st Cir.), cert. denied, 449 U.S. 887 (1980); *United States* v. *DeWeese*, 632 F.2d 1267, 1269 (5th Cir. 1980), cert. denied, 454 U.S. 878 (1981); *United States* v. *Lopez*, 761 F.2d 632, 636 (11th Cir. 1985); *United States* v. *Thompson*, 710 F.2d 1500, 1504-1505 (11th Cir. 1983), cert. denied, 464 U.S. 1050 (1984). Despite petitioners' contention to the contrary (Pet. 9-10 & n.7), the Fourth Circuit has reached the same conclusion. See *United States* v. *Allen*, 690 F.2d 409, 411 (4th Cir. 1982); *United States* v. *Watkins*, 662 F.2d 1090, 1095 (4th Cir. 1981) (dictum), cert. denied, 455 U.S. 989 (1982).[5]

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[4] While petitioners rely on cases involving inspections of automobiles (Pet. 18-20), *Villamonte-Marquez* indicated that the impossibility of establishing checkpoints on the open sea, as well as the differing documentation requirements for ships and automobiles, make those cases inapposite here. See 462 U.S. at 589-591. Petitioners' contention (Pet. 21-25) that safety and document inspections must be conducted pursuant to an administrative plan also cannot be reconciled with *Villamonte-Marquez*.

[5] Petitioners are incorrect in asserting that the Fourth Circuit has imposed a reasonable suspicion or administrative plan requirement on documentation and safety inspections. *United States* v. *Manbeck*, 744 F.2d 360 (4th Cir. 1984), cert. denied, 469 U.S. 1217 (1985), and *United States* v. *Watkins*, 662 F.2d 1090 (4th Cir. 1981), cert. denied, 455 U.S. 989 (1982), which petitioners cite for that proposition (Pet. 10 n.7), are inapposite; those cases involved not safety and document inspections but stops in furtherance of criminal investigations. See

Prior to the decision in *Villamonte-Marquez*, the Second and Third Circuits had indicated in dictum that reasonable suspicion of criminality was necessary to justify a boarding on the high seas.[6] But neither court has had occasion to consider the issue since *Villamonte-Marquez* was decided. The other authority cited by petitioners (see Pet. 16 n.14, 20, 21 n.16, 24-25) also predates *Villamonte-Marquez*. The post-*Villamonte-Marquez* decisions cited by petitioner, moreover, did not involve safety and documentation inspections of American flag vessels, and therefore are inapposite here.[7] In these circumstances – and in light of the narrow nature of the court of appeals' holding – review on this issue is not warranted.

Manbeck, 744 F.2d at 381; *Watkins*, 662 F.2d at 1094. See also *id.* at 1095 (noting that routine safety inspections may be conducted without a warrant or suspicion of criminality). The purported confusion among the courts noted in *Manbeck* (see Pet. 13-14 (quoting 744 F.2d at 382)) thus concerns the standard that must be met when "boarding is conducted for *more* than a document inspection" (744 F.2d at 382 (emphasis added)).

[6] See *United States* v. *Streifel*, 665 F.2d 414, 419-420 & n.8 (2d Cir. 1981) (court noted that the Coast Guard had not attempted to justify the boarding on "administrative" grounds and therefore did not resolve whether such grounds would support a boarding on less than reasonable suspicion); *United States* v. *Demanett*, 629 F.2d 862, 867-868 (3d Cir. 1980), cert. denied, 450 U.S. 910 (1981) (because the court found reasonable suspicion, it reserved the question whether a suspicionless boarding could be made for the purpose of inspecting documents). *United States* v. *Pinto-Mejia*, 720 F.2d 248, 251-252, 261-262 (2d Cir. 1983), modified on other grounds, 728 F.2d 142 (2d Cir. 1984), also cited by petitioners (Pet. 9 n.5), is inapposite; it involved not a safety and documentation inspection but a boarding to investigate criminal conduct.

[7] *United States* v. *Quemener*, 789 F.2d 145 (2d Cir. 1986), cert. denied, No. 85-2146 (Oct. 6, 1986) (cited at Pet. 9 n.5), involved the boarding of a foreign flag vessel to investigate criminal conduct (see 789 F.2d at 148, 155); moreover, by treaty the boarding in that case was permissible only if the Coast Guard had reasonable suspicion that

2. Petitioners also challenge Rutz's inspection of the marine sanitation device (Pet. 14-17). On the record here, that challenge is without merit. Petitioners do not appear to take issue with Rutz's entry into the cabin to secure the ORCA's weapons, or his inspection of the ship's fire extinguishers at Humphrey's invitation. In these circumstances, Rutz's request to view the marine sanitation device—a standard request (see Pet. App. 24) that was not refused by petitioners—was proper. As the court of appeals correctly explained, given Rutz's prior legitimate entry into the cabin, "[t]here was almost no invasion of protected Fourth Amendment privacy to weight against the governmental interest in conducting a routine safety and document inspection" (*id.* at 20-21). The court accordingly found it unnecessary to decide whether a document and safety inspection may intrude into below-deck living quarters in the absence of a legitimate, independent reason to enter the area (see *id.* at 21, 22). There is no need to review this narrow and fact-bound conclusion.

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the vessel was transporting narcotics (see *id.* at 149). *United States* v. *Wright-Barker*, 784 F.2d 161 (3d Cir. 1986) (cited at Pet. 10 n.6), also involved the boarding of a foreign flag vessel, apparently to further a criminal investigation (see 784 F.2d at 176). Citing *Villamonte-Marquez*, the court of appeals in that case noted that reasonable suspicion might not be necessary to justify a boarding, although the existence of reasonable suspicion made it unnecessary to resolve the issue (see 784 F.2d at 176 n.14).

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

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